

EXHIBIT 16.2

STIPULATION AND
FORM OF JUDGMENT

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19
20 **UNITED STATES DISTRICT COURT**
21 **DISTRICT OF ARIZONA**

22 UNITED STATES, et al.,

23 Plaintiffs,

24 v.

25 CITY OF TUCSON, et. al.,

26 Defendants.
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28

No. CV 75-039 TUC FRZ

(Consolidated with CV No. 75-051)

1 FELICIA ALVAREZ, et al.,

2 Plaintiffs,

3 v.

4 CITY OF TUCSON, et al.,

5 Defendants.

No. CV 93-039 TUC FRZ

7
8 **NOTICE OF FILING AMENDED EXHIBIT 16.2 TO THE**
9 **TOHONO O'ODHAM SETTLEMENT AGREEMENT**

10 The parties hereto, by and through their undersigned attorneys herewith, give notice
11 of filing of the Amended Exhibit 16.2 to the Tohono O'odham Settlement Agreement. A
12 copy of the Amended Exhibit 16.2 is attached hereto and made a part hereof.

13 Dated this 3rd day of February, 2006.

14
15 SACKS TIERNEY P.A.

16
17 By s/ Judith M. Dworkin
18 Attorneys for City of Tucson

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20 OFFICE OF THE ATTORNEY GENERAL

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22 By s/ David P. Frank
23 Attorney for Tohono O'odham Nation

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LUEBBEN, JOHNSON & BARNHOUSE

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Attorneys for *United States v. City of*
Tucson Allottee Class
Attorneys for *Felicia Alvarez v. City of*
Tucson Allottee Classes

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By: s/ Robert B. Hoffman
Attorney for Farmers Investment Co.

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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 United States of America, et al.,

10 Plaintiffs,

11 vs.

12 City of Tucson, et al.,

13 Defendants.

14 Felicia Alvarez, et al.,

15 Plaintiffs,

16 vs.

17 City of Tucson, et al.,

18 Defendants.
19
20

No. CV 75-039-TUC-FRZ

(consolidated with CV 75-051)

FINAL JUDGMENT

No. CV 93-039-TUC-FRZ

PARTIAL JUDGMENT

21 This matter having come before the court for hearing, pursuant to the Order of the
22 Court, dated October 12, 2005, on the Joint Motion of plaintiffs and defendants for approval
23 of the settlement set forth in the Tohono O'odham Settlement Agreement ("Settlement
24 Agreement") dated April 30, 2003, amended to conform with Public Law 108-451, 118 Stat.
25 3478, due and adequate notice having been given to the Plaintiff Allottee Classes as required
26 in the Order, the Court having considered all papers filed, and argument and evidence
27 provided at the proceeding and otherwise being fully informed in the matter, and good cause
28 appearing therefore,

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

2 1. This Final Judgment in Case No. CV 75-039 TUC FRZ (Consolidated with CV
3 No. 75-051) and Partial Judgment in Case No. CV 93-039 TUC FRZ (collectively, the
4 "Judgment") incorporates by reference the definitions set forth in the Settlement Agreement,
5 and all terms used herein shall have the same meanings as set forth in the Settlement
6 Agreement.

7 2. This Court has jurisdiction over the subject matter of this litigation and over
8 all parties to this litigation, including all members of the Plaintiff Allottee Classes.

9 3. This Court hereby approves the settlement set forth in the Settlement
10 Agreement (the "Settlement") and finds that the Settlement is, in all respects, fair, reasonable,
11 adequate and in the best interests of the Plaintiff Allottee Classes. Consummation of the
12 Settlement in accordance with the terms and provisions of the Settlement Agreement is
13 approved.

14 4. The Settlement is binding upon: all parties to this consolidated litigation
15 including (a) the Tohono O'odham Nation, (b) all persons (i) that hold a beneficial real
16 property interest in an Indian allotment that is located within the San Xavier Reservation and
17 is held in trust by the United States or (ii) that hold fee simple title in real property on the San
18 Xavier reservation that, at any time before the date on which the person acquired fee simple
19 title, was held in trust by the United States as an Indian allotment and (iii) who have not
20 timely elected to be excluded from the Classes as provided by the Court in its Order dated
21 October 12, 2005, (c) the United States, (d) the city of Tucson, (e) Farmers Investment
22 Company and the Farmers Water Company (together referred to as "FICO"), (f) Asarco
23 Mining Company ("Asarco") and all other defendant parties.

24 5. By reason of the Settlement, members of the Allottee Classes (along with the
25 San Xavier District) are entitled to:

26 a. a first right of beneficial use to 35,000 acre feet per year of Central Arizona
27 Project ("CAP") water of the 50,000 acre feet per year of CAP water deliverable to
28 the San Xavier District,

- b. 10,000 acre feet per year of groundwater pumping right,
- c. a right to "bank" in a deferred pumping storage account groundwater not pumped in any year and pump up to an additional 10,000 acre feet per year or a maximum of 50,000 acre feet in any 10-year period of deferred groundwater pumping credits,
- d. a right to pump groundwater from Exempt Wells,
- e. a right to the use of direct recharge credits to pump water from the ground that are not marketable under state law,
- f. protections for due process and other rights pursuant to an allottee water rights code,
- g. the right to have the San Xavier District elect to accept a cash-out of \$18,300,000 (plus interest from January 1, 2008 until the cash-out) in lieu of construction of a new farm within the San Xavier Reservation, funds to be controlled, managed and invested by the San Xavier District and used for governmental and social services for the San Xavier community and the allottees,
- h. state limitations on approval of new pumping from the area in close proximity to the San Xavier Reservation,
- i. the sum of up to \$891,200 for a water management plan for the San Xavier Reservation,
- j. the sum of \$300,000 from the city of Tucson in 5 annual installments of \$60,000 for the repair of Sinkholes that have occurred on the San Xavier Reservation,
- k. an agreement with FICO to limit pumping by FICO to no more than 850 acre feet per year from within 2 miles of the San Xavier Reservation and to further limit pumping to 36,000 acre feet per year not including water stored in the ground from all FICO's lands,
- l. an agreement with Asarco to use CAP water thereby limiting Asarco's groundwater pumping on and near the San Xavier Reservation, and
- m. a right to benefit from the sale of marketable groundwater credits obtained

1 through the use by Asarco of CAP rather than groundwater.

2 6. In exchange for the benefits provided in the Settlement and effective on the
3 Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally waives and
4 releases:

5 a. any and all past, present, and future claims for Water Rights (including
6 claims based on aboriginal occupancy) arising from time immemorial and, thereafter,
7 forever, claims for Injury to Water Rights from time immemorial through the
8 Enforceability Date, and claims for future Injury to Water Rights for land within the
9 San Xavier Reservation, against the State (or any agency or political subdivision of
10 the State), any municipal corporation; and any other person or entity (other than the
11 Nation);

12 b. any and all claims for Water Rights arising from time immemorial and,
13 thereafter, forever, claims for Injury to Water Rights arising from time immemorial
14 through the Enforceability Date, claims for failure to protect, acquire, or develop
15 Water Rights for land within the San Xavier Reservation from time immemorial
16 through the Enforceability Date, against the United States, in any capacity, (including
17 any agency, officer, and employee of the United States);

18 c. any and all claims for Injury to Water Rights arising after the
19 Enforceability Date for land within the San Xavier Reservation resulting from the off-
20 Reservation diversion or use of water in a manner not in violation of the Settlement
21 or State law against the United States, in any capacity, the State (or any agency or
22 political subdivision of the State), any municipal corporation, and any other person
23 or entity;

24 d. any and all past, present, and future claims arising out of or relating to the
25 negotiation or execution of this Agreement or the negotiation or enactment of the
26 SAWRSA Amendments, against the United States, the State (or any agency or
27 political subdivision of the State), any municipal corporation; and any other person
28 or entity; and

1 e. any and all past, present, and future claims for Water Rights arising from
2 time immemorial and, thereafter, forever, and claims for Injury to Water Rights
3 arising from time immemorial through the Enforceability Date, against the Nation
4 (except that under subsection 307(a)(1)(G) and subsections (a) and (b) of section 308
5 of the SAWRSA Amendments, the Allottees and Fee Owners of Allotted Land shall
6 retain rights to share in the water resources granted or confirmed under the SAWRSA
7 Amendments and this Agreement with respect to uses within the San Xavier
8 Reservation).

9 7. In exchange for the benefits provided in the Tucson Agreement and effective
10 on the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally
11 waives and releases:

12 a. any and all claims against the city of Tucson (including any agency, officer
13 and employee of the City) for injuries to land within the Tucson Management Area
14 resulting from Sinkholes, Land Subsidence or erosion under Federal, State and other
15 laws which may otherwise have been enforceable by money damages, declaratory
16 relief, injunction, or other remedy arising from time immemorial to the Enforceability
17 Date and thereafter forever; and

18 b. any and all past, present and future claims against the United States
19 (including any agency, officer and employee of the United States) for injuries to land
20 within the Tucson Management Area resulting from Sinkholes, Land Subsidence or
21 erosion caused by or resulting from the actions or inactions of the City of Tucson
22 under Federal, State and other laws which may otherwise have been enforceable by
23 money damages, declaratory relief, injunction, or other remedy.

24 8. In exchange for the benefits provided in the Asarco Agreement and effective
25 on the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally
26 waives and releases:

27 a. all claims against Asarco arising out of Asarco's withdrawal of water from
28 beneath the ground within the Tucson Management Area from time immemorial

1 through the Enforceability Date; and

2 b. all claims against Asarco that may arise after the Enforceability Date to the
3 extent that such claims arise out of Asarco's withdrawal of water within the Tucson
4 Management Area pursuant to its existing Type 1 and Type 2 state law water rights
5 and withdrawals of stored water as defined on the Enforceability Date in A.R.S. § 45-
6 802.01, except as such rights are agreed to be limited in the Settlement.

7 9. In exchange for the benefits provided in the FICO Agreement and effective on
8 the Enforceability Date, each Plaintiff Allottee Class irrevocably and unconditionally waives
9 and releases:

10 a. all claims against FICO arising out of FICO's withdrawal of water from
11 beneath the ground within the Tucson Management Area from time immemorial
12 through the Enforceability Date; and

13 b. all claims against FICO that may arise after the Enforceability Date to the
14 extent that such claims arise out of FICO's withdrawal of water within the Tucson
15 Management Area pursuant to its existing Irrigation Type 1 and Type 2 state law
16 water rights and withdrawals of stored water as defined on the Enforceability Date in
17 A.R.S. § 45-802.01, except as such rights are agreed to be limited in this Agreement.

18 10. With respect to the releases contained in the Settlement, the Court finds that
19 the Plaintiff Allottee Classes expressly understand and agree that the Settlement fully and
20 finally releases and forever resolves the matters released and discharged in paragraphs 6
21 through 9 above and in the Settlement Agreement, including those which may be unknown,
22 unanticipated or unsuspected. Each Plaintiff Allottee Class acknowledges that it is aware
23 that the class members may hereafter discover facts relevant to the subject matter of this
24 Settlement, but that it is the intention of each member of the Plaintiff Allottee Class hereby
25 to fully, finally and forever settle and release all of the claims, disputes and differences
26 known or unknown, suspected or unsuspected, except as otherwise expressly provided
27 herein.

28 11. The Defendant parties to the Settlement agree that the Settlement represents

1 a compromise of disputed claims without admission of any fact or allegation.

2 12. Following entry of this Judgment, the representatives of the Plaintiff Allottee
3 Classes shall execute the Settlement Agreement on behalf of the members of the respective
4 classes.

5 13. This Judgment shall be an exhibit to the Stipulation and Request for Entry of
6 Judgment and Decree in the Arizona state court adjudication proceeding entitled In re the
7 General Adjudication of All Rights to Use Water in the Gila River System and Source, No.
8 W-1, W-2, W-3 and W-4 (the "Gila River Adjudication Court").

9 14. With the exception of the use of this Judgment in the Gila River Adjudication
10 Court, neither this Judgment nor any other order entered in this consolidated litigation shall
11 constitute an admission of liability or of any other fact by any party, and no such document
12 or order shall have any res judicata, collateral estoppel or issue preclusive effect in any other
13 or subsequent proceeding.

14 15. The Settlement Agreement and all exhibits and attachments thereto including
15 the separate agreements referred to as the Tucson Agreement, the FICO Agreement and the
16 Asarco Agreement are incorporated herein by this reference and are made a part of this
17 Judgment. This Judgment does not diminish the rights and obligations of the parties under
18 the Settlement Agreement.

19 16. The above-captioned case of *United States v. Tucson*, CV 75-039 TUC FRZ
20 (consolidated with CV 75-051) and Causes of Action 1 through 3 of *Alvarez v. Tucson*, CV
21 93-039 TUC FRZ, are dismissed with prejudice effective upon the publication by the
22 Secretary of the Interior of a notice in the Federal Register of completion of all actions
23 necessary to make the settlement effective as required by Section 302(b) of the Arizona
24 Water Settlements Act of 2004, Public Law 108-451, 118 Stat. 3478. Without limiting the
25 generality and legal effect of the foregoing, the dismissal with prejudice extends to all claims
26 ever asserted in this Consolidated Litigation individually or on behalf of the Plaintiff Allottee
27 Classes except those claims raised in Causes of Action 4 and 5 of *Alvarez v. Tucson*, CV 93-
28 039 TUC FRZ.

17. All members of the Plaintiff Allottee Classes as of January 14, 2006 shall conclusively be deemed to be and remain members of the Plaintiff Allottee Classes, to have given the releases described in Paragraphs 6 through 9 above, and to be bound by the Settlement and this Judgment.

18. All members of the Plaintiff Allottee Classes are barred and permanently enjoined from instituting, asserting or prosecuting, directly, representatively, derivatively or in any other capacity, any claims against any of the Released Parties.

19. The Notice given to the Plaintiff Allottee Classes of the Settlement as described in the Joint Motion and the Order constituted the best notice practicable under the circumstances. The Notice provided due and adequate notice of these proceedings and of the matters set forth in the Notice, including the Settlement set forth in the Joint Motion, to all persons entitled to such Notice, and the Notice fully satisfied the requirements of due process and applicable law.

20. The Court having considered any objections filed by members of the Plaintiff Allottee Classes to entry of this Judgment, and having found those objections, if any, to be without merit in the circumstances, all such objections are overruled and denied.

21. Upon publication of the notice in the Federal Register identified in paragraph 16, the parties are directed to file a copy of the Federal Register notice with the Court.

22. Causes of Action 4 and 5 of *Alvarez v. Tucson* are not dismissed.

23. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court further expressly finds and determines that there is no just reason for delay and therefore expressly directs that this Judgment be entered as a final judgment.

DATED this 14th day of June, 2006.

Frank R. Zapata
FRANK R. ZAPATA
United States District Judge